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# SUPREME COURT OF THE UNITED STATES
## OCTOBER TERM, 1934.

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**No. 454.**

THE STEWART DRY GOODS COMPANY,

*vs.* *Appellant,*

JOHN B. LEWIS, W. P. SULLIVAN AND EMERSON BEAUCHAMP, INDIVIDUALLY AND AS MEMBERS OF THE STATE TAX COMMISSION OF THE COMMONWEALTH OF KENTUCKY.

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**No. 455.**

FRED LEVY ET AL.,

*vs.* *Appellants,*

JOHN B. LEWIS, W. P. SULLIVAN AND EMERSON BEAUCHAMP, INDIVIDUALLY AND AS MEMBERS OF THE STATE TAX COMMISSION OF THE COMMONWEALTH OF KENTUCKY.

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**No. 456.**

THE J. C. PENNEY COMPANY,

*vs.* *Appellant,*

JOHN B. LEWIS, W. P. SULLIVAN AND EMERSON BEAUCHAMP, INDIVIDUALLY AND AS MEMBERS OF THE STATE TAX COMMISSION OF THE COMMONWEALTH OF KENTUCKY.

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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

No. 457.

THE KROGER GROCERY & BAKING COMPANY,
*Appellant,*
*vs.*
JOHN B. LEWIS, W. P. SULLIVAN AND EMERSON BEAUCHAMP, INDIVIDUALLY AND AS MEMBERS OF THE STATE TAX COMMISSION OF THE COMMONWEALTH OF KENTUCKY.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF KENTUCKY.

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## STATEMENT AS TO JURISDICTION.

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(A) This appeal is taken pursuant to Judicial Code, Section 266, U. S. Code, Title 28, Section 380, from a final decree by a statutory court of three judges convened to hear the above styled cause and all motions therein, after an application had been made for an interlocutory injunction to restrain the appellees from enforcing Chapter 149 of the Acts of the General Assembly of the State of Kentucky at its 1930 session. The statutory court having granted the motion for an interlocutory injunction upon final hearing entered its decree denying a permanent injunction and dismissing the bill of complaint, but continued the interlocutory injunction in effect pending the hearing of this appeal.

(B) The statute of the State of Kentucky, the validity of which is involved herein, is Chapter 149, officially published at pages 475 to 482 of the Acts of the General Assembly of Kentucky at its 1930 regular session. The said statute, commonly known as the Kentucky Gross Sales Tax Law, is

set out in full in the bill of complaint and its substantial provisions are set out in the opinion of the court. The statute undertakes to levy an annual license tax upon retail merchants as defined in the statute, computed on the amount of gross sales of such merchant at rates varying from one-twentieth of one per cent of such merchant's gross sales below $400,000 to one per cent of such merchant's sales in excess of $1,000,000, and permitting such merchant to take credit on the amount of any tax levied under such act for the amount of any other special license, excise, occupational or corporation license tax, not to exceed the amount of the tax levied under said act.

(C) The decree appealed from was entered June 19, 1934. Application for appeal was presented September 12, 1934.

This case was before the Supreme Court on appeal from the previous decree of this court denying an interlocutory injunction and denying a permanent injunction and dismissing the bill of complaint on the ground that the plaintiff had an adequate remedy at law. Upon such previous appeal, the said decree was reversed. *The Stewart Dry Goods Company* v. *Lewis et al.*, 287 U. S. 9.

The former appeal of *The Stewart Dry Goods Company* v. *Lewis et al.* (*supra*) was heard in the Supreme Court together with No. 28, *Levy et al.* v. *Lewis et al.*, No. 29, *The J. C. Penney Company* v. *Same*, and No. 30, *Kroger Grocery & Baking Company* v. *Same*, one opinion having been written for all four cases (287 U. S. 9).

This suit was brought by plaintiff against the defendants, public officials of the Commonwealth of Kentucky, to enjoin them from enforcing or executing against plaintiff and other taxpayers similarly situated the provisions of Chapter 149 of the Acts of the General Assembly of Ken-

tucky at its 1930 session on the ground that such statute was violative of the Federal Constitution and the State Constitution in various respects as set forth in plaintiff's bill of complaint. Plaintiff sought and obtained a restraining order, and pressed to a hearing its application for an interlocutory injunction to restrain the appellees from enforcing said act.

A statutory court of three judges was convened and heard said cause and all motions therein pursuant to the provisions of Section 266 of the Judicial Code, as amended (United States Code, Title 28, Section 380).

Among the many cases believed to sustain the jurisdiction of the Supreme Court on appeal are:

*Stewart Dry Goods Co.* v. *Lewis et al.*, 287 U. S. 9.
*Interstate Busses Corp.* v. *Blodgett*, 276 U. S. 245.
*Smith* v. *Wilson*, 273 U. S. 388.

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*Counsel for Plaintiff.*